IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 338 of 2001
(Old No. 1670 of 1986)

Mahendra Singh
S/o Ratan Singh
R/o Village Naini, P.S. Kotwali
District Pithoragarh.

……. Appellant

Versus

The State

….. Respondent

Mr. Kailash Joshi, Advocate for the appellant.
Mr. Vinod Tiwari, Advocate for the injured Pushpa Devi.
Mr. Nandan Arya, Standing Counsel for the respondent State.

Hon. Prafulla C. Pant, J.

This appeal, preferred under Section 374(2) of the code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 26.05.1986, passed by learned Sessions Judge, Pithoragarh, in Sessions trial No. 06 of 1986, whereby the appellant Mahendra Singh has been convicted under Section 307 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced to undergo rigorous imprisonment for a period of ten years, and also directed to pay fine of Rs. 2,000/-, in default of payment of which he has to undergo further six months rigorous imprisonment.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that accused / appellant Mahendra Singh is husband of P.W. 3 Pushpa Devi alias Kalawati. The accused / appellant was habitual drunkard and used to beat his wife Smt. Pushpa Devi. On 30.12.1985, at about 8:30 P.M., the accused / appellant Mahendra Singh demanded money from his wife, and on her showing inability to fulfill the demand, he set her on fire. However, it appears that no first Information report was lodged till 3rd Januray, 1986. Meanwhile, on 31.12.1985, P.W. 3 Smt. Pushpa Devi was taken to hospital for treatment of burn injuries. The Medical Officer P.W. 2 Dr. G.K. Sharma, found following burn injuries, which were recorded by him in the register of accidental injuries. The same are being reproduced hereunder:

> "1 ***Swollen face (oeadamdex), eyes, mouth, lips, forehead, scalp, nose in the area of about 22 cm X 22 cm.***
>
> ***2. Burst blisters in the middle of chest between breasts.***
>
> ***3. Burst blisters over both hands and wrists."***

4) Considering the general condition of the patient, the doctor admitted Smt. Pushpa Devi, and prepared injury report (Ext. A –2) P.W. 1 Nandan Singh, brother of the injured, when came to know about the incident on 01.01.1986, saw his sister and lodged the first information report (Ext. A –1) on 03.01.1986 i.e. after three days of the incident. A case crime No. 03 of 1986 was registered against the accused / appellant with police station Kotwali Pithoragarh, relating to offence punishable under Section 307 of I.P.C. The Investigating Officer after interrogating

the witnesses, and preparation of the site plan, submitted charge sheet (Ext. A –17) against the accused / appellant Mahendra Singh, for his trial in respect of offence punishable under Section 307 of I.P.C.

5) The Magistrate concerned on receipt of the charge sheet, appears to have committed the case to the court of Sessions for trial, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C. Learned Sessions Judge, Pithoragarh after hearing the prosecution and the defence, framed charge against the accused / appellant Mahendra Singh relating to offence punishable under Section 307 of the I.P.C. The accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Nandan Singh (informant and brother of the inujured); P.W. 2 Dr. G.K. Sharma (Medeical Officer who recorded burn injuries on the person of Pushpa Devi); P.W. 3 Smt. Pushpa Devi (the injured); P.W. 4 Karam Singh (father of the injured) and P.W. 5 Govind singh (the Investigating Officer). The oral and documentary evidence, was put to the accused under Section 313 of Cr.P.C., in reply to which the accused alleged the same to be false. No evidence in defence was adduced on prosecution and the defence, found accused / appellant Mahendra Singh guilty of charge of offence punishable under Section 307 of I.P.C., and after hearing the parties on sentence, sentenced him under Section 307 of I.P.C. to rigorous imprisonment for ten years and also to pay fine of Rs. 2,000/-, in default of payment of which, he was directed to undergo further rigorous imprisonment for six months.

Aggrieved by the judgment and order dated 26.05.1986, convict Mahendra Singh preferred this appeal before the Allahabad High Court, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

6) At the time of final hearing of this appeal, both appellant Mahendra Singh and his wife Smt. Pushpa Devi (P.W.3) were present in the Court along with their counsel. Smt. Pushpa Devi, injured, wife of the accused, in person stated before this Court that after her husband was released on bail in this case, she is living for last several years with her husband, She further stated that they have children out of the wedlock and their family life would be in jeopardy, if her husband Mahendra Singh (accused / appellant) is sent to jail. An affidavit was also filed by Smt. Pushpa Devi before the Court, to this effect.

7) The appeal was examined on merits, after hearing learned counsel for the parties. Though, the first information report is a delayed one, but the injuries suffered by P.W. 3 Pushpa Devi speak of the trauma she had undergone. Her statement cannot be disbelieved, simply for the reason, that the first information report is a delayed one. Since, she has suffered burn injuries at the hands of her husband. There was none to lodge the first information report on her behalf to the police, as such, lodging the first information report on the part of his brother P.W. 1 Nandan Singh, after three days, stands explained on the record. Mr. Kailash Joshi, learned counsel for Smt. Pushpa Devi, the injured, argued that in the cross examination of P.W. 2 Dr. G.K. Sharma, it has come on record that he examined injuries on the person

of Smt. Pushpa Devi and, at that time also she did not disclosed that her husband set her on fire, and that is why, burn Injuries were recorded in a register of accidental injuries. No doubt, the said fact is true, but there is explanation in the statement of P.W. 3 Smt. Pushpa Devi, the injured, that her husband took her to hospital only after she promised him that she would not disclose that her husband has caused injuries on her person. In that compelling circumstance, non-disclosure of the manner in which the incident had taken place, to the Medical Officer also stands explained. On behalf of the appellant it is also contended that P.W. 3 Smt. Pushpa Devi herself admitted in her cross-examination that accused / appellant Mahendra Singh poured water on her body to extinguish the fire. No doubt there is such statement in the cross-examination of P.W. 3 Smt. Pushpa Devi, but that statement is preceded with the words 'मुल्जिम ने इस डर से कि मकान में आग न लग जाय, पानी डाल कर मेरे शरीर में लगी आग बुझा दी।' (apprehending that the house may be engulfed by fire, the accused poured water on my body to extinguish the fire).

8) For the reasons as discussed above, this Court does not find any error of fact or that of law in appreciating the evidence on the part of the trial court, in coming to the conclusion that the charge of offence punishable under Section 307 of I.P.C., stood proved against the accused / appellant Mahendra Singh. However, this Court cannot close its eyes to the developments which have taken place after the accused / appellant was released on bail, vide order dated 29.09.1986 by the Allahabad High Court, in this case. Both husband and wife (appellant and the victim) are living

happily for years together with their children. From the perusal of the record, it is also clear, that accused / appellant Mahendra Singh has already spent period of more than 9 ½ months, in jail. He appears to have been arrested on 3 /4th of January 1986, and remained in jail throughout the trial. He was enlarged on bail, vide order dated 29.9.1986, passed by the Allahabad High Court, only after filing this appeal before said Court. In the circumstances, this Court is of the view that while the conviction of the accused / appellant deserves to be affirmed, sentence awarded against him can be reduced to the period already undergone by him to protect the happy married life, which the appellant and the victim are enjoying, after the release of the accused from jail, on bail.

9) Accordingly, the appeal is partly allowed. The conviction of the accused / appellant Mahendra Singh is maintained under Section 307 of I.P.C. However, keeping in view the fact that the convict and the injured, who are husband and wife, are living together happily, the sentence awarded by the trial court, is set aside, and the same is reduced to rigorous imprisonment of 9 ½ months, which the appellant has already undergone, during the trial and during the pendency of this appeal. The appellant Mahendra Singh is on bail. He need not to surrender. His bail bonds are cancelled and sureties stand discharged.

(Prafulla C. Pant, J.)

Dt. March 06, 2007.
H. Negi